83-518

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No. _____

AT LAW
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JAMES JACQUES, GLORIA JACQUES, APPELLANTS
v.
UNITED STATES OF AMERICA AND
TONY PACHECO, JR., REVENUE AGENT,
APPELLEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BY SPECIAL APPEARANCE

SUPPLEMENTAL APPENDIX

JAMES JACQUES
GLORIA JACQUES
P. O. Box 23613
San Jose, California 95153
(408) 688-7467
In Propria Personam

APPENDIX A
COURT DOCUMENTS

APPENDIX A
COURT DOCUMENTS
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Reference 1a

RECEIVED April 27, 1982, Original Filed April 30, 1982. Clerk, U.S. District Court San Francisco.

Joseph P. Russoniello, United States Attorney, Jay R. Weill, Assistant United States Attorney, Chief, Tax Division, Michael D. Howard, Assistant United States Attorney, 16th Floor Federal Building, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102. Telephone: (415) 556-1487, Attorneys for Petitioners.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK: BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents.

CIVIL No. C82-1826-WAI. ORDER TO SHOW CAUSE RE ENFORCEMENT OF INTERNAL REVENUE SUMMONSES.

Good cause having been shown by the petitioners upon their verified petition filed in the above-entitled proceeding on April 27, 1982, it is hereby: ORDERED that respondents PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK appear in person or by their authorized representative before this Court on the 19th day of July, 1982, at 10:00 A.M. in Courtroom No. 10, 19th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, and then and there show cause, if any they have, why they should not be compelled to appear and testify and produce books, records, and other documents as commanded by the summonses heretofore served upon them as alleged and set forth in particular in said petition; and it is further

ORDERED that a certified copy of this Order to Show Cause, together with a copy of the aforesaid verified petition, be served upon each respondent in accordance with Rule 4 of the Federal Rules of Civil Procedure at least twenty-eight (28) days before the return date of this Order above specified; and it is further

ORDERED that within fourteen (14) days before the return date of this Order, the respondents and any party intervening herein may file and serve a written response to the verified petition supported by appropriate affidavit(s) or declaration(s) in conformance with 28 U.S.C. § 1746, as well as any motions they desire to make; that the petitioners may file and serve a written reply to such response, if any, within seven (7) days before the return date of this Order; that all motions and issues raised by the pleadings will be considered on the return date of this Order, and only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) or declaration(s) will be considered at the return of this Order, and any uncontested allegation in the petition will be considered admitted.

ORDERED this ____ day of _____ , 1982, at San Francisco, California.

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

Reference 2a

FILED September 8, 1982

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK: BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents, and JAMES JACQUES, GLORIA JACQUES, JACQUES, INC., Intervenors, pro se.

NO. C-82-1826-WAI. DECISION AND ORDER.

The application of the United States of America and Tony Pacheco, Jr., Revenue Agent, for summons enforcement in the above-entitled action is GRANTED.

Plaintiffs have complied with 26 U.S.C., Section 7603, 7605, and 7609. Additionally, there has been compliance with Internal Revenue Manual, Section 4022.12(1). On the basis of the hearing conducted in this matter on July 19, 1982, and of all the papers and records on file herein, it does not appear that there is any adequate reason to deny the enforcement of these summons. Specifically, the Court finds that a second inspection notice under 26 U.S.C., Section 7605(b), is not required in these circumstances inasmuch as

there has been no prior request for the bank's records as distinguished from those of intervenors, and, in any event, the investigation to which this application is incident is on-going and continuing.

Furthermore, on the basis of the evidence and documents in this case, the Court finds as follows:

1. There is no showing that the investigation in progess was undertaken for improper motives or motives of harassment.
2. The investigation is conducted for a legitimate purpose.
3. The inquiry encompassed in the summons in issue is relevant to that purpose.
4. The information sought is not already in possession of plaintiffs.
5. All administrative steps required by applicable law have been followed.

Based upon the foregoing, IT IS ORDERED that the release sought herein by plaintiffs be and the same hereby is GRANTED.

DATED: September 8, 1982

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

Reference 3a

FILED: DECEMBER 10, 1982

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES JACQUES, GLORIA JACQUES, Petitioners, v. UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT OF CALIFORNIA, Respondent, UNITED STATES OF AMERICA: TONY PACHECO, JR., Real Parties in Interest.

NO. 82-7551. DC# C-82-1826-WAI. Northern California. ORDER

Before: FARRIS and NELSON, Circuit Judges.

This Petition for Rehearing, filed November 10, 1982, is DENIED. MO CAL 11/8/82

CROCKER NATIONAL BANK
Blossom Hill - Snell Office, 444 Blossom Hill Road, San Jose, California 95123
December 21, 1982
James Jacques, Gloria Jacques, 445 Blossom Hill Road, San Jose, California 95123
Dear Mr. or Mrs. Jacques;

This is to notify you that the order enforcing the order from IRS is in full force and binding.

This is to also notify you that upon the request from IRS, we will be supplying them with the information which they requested on their original order.

Sincerely,
Donna B. Pratt
Assistant Manager

Reference 4a

FILED December 20, 1982

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK: BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents, JAMES JACQUES, GLORIA JACQUES, JACQUES, INC., Intervenors, pro se.

NO. C-82-1826-WAI. DENIAL OF STAY.

Respondents request for a stay pending appeal is hereby denied.

DATED: 12-20-82

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

Reference 5a

FILED April 26, 1983

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK, Respondents-Appellees, and JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.

No. 82-4515. DC# CV-82-1826 WAI. Northern California.

ORDER

Before: NELSON and REINHARDT, Circuit Judges

Appellees' motion to dismiss this appeal as moot is granted. Appellants' pending motion are denied as moot. This matter is remanded to the district court with direction to vacate the order appealed. *United States v. Silva and Silva Accountancy Corp.*, 641 F.2d 710 (9th Cir. 1981).

MoCal 4/18/83

Reference 7a

FILED June 30, 1983

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK, Respondents-Appellees, and JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.

No. 82-4515. DC# CV-82-1826 WAI. Northern California. ORDER

Before: NELSON and REINHARDT, Circuit Judges.

Appellants' petition for rehearing of the April 26, 1983 order dismissing this appeal is denied. The suggestion for rehearing en banc is rejected.

MoCal 4/18/83

Reference 8a

Received July 6, 1983

JAMES JACQUES, GLORIA JACQUES, 1336 Hillcrest Drive, San Jose, CA 95120, Telephone: (408) 997-7816, Intervenors Pro Per

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK, Respondents-Appellants, and JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.

C.A. #82-4515. DC# CV-82-1826 WAI. Northern California. SPECIAL APPEARANCE.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Jacques, Intervenor-Appellants in this case, hereby appeal to the Supreme Court of the United States from the judgement of the United States Court of Appeals for the Ninth Circuit dated April 26, 1983, rehearing denied by order dated June 30, 1983, enforcing the judgment of the United States District Court for the District of Northern California dated September 8, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1252, 28 U.S.C. § 1254 and 18 U.S.C. § 242.

JAMES JACQUES - PRO PER

GLORIA JACQUES - PRO PER
1336 Hillcrest Drive
San Jose, CA 95120

JAMES JACQUES, GLORIA JACQUES, 1336 Hillcrest Drive, San Jose, California 95120, Telephone: (408) 997-7816, Intervenors Pro Per

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK: BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents-Appellants, JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.

C.A. #82-4515. DC# CV-82-1826-WAI. Northern California. Petition For Rehearing and Suggestion That Case Be Reheard in Banc. (SPECIAL APPEARANCE)

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Rule 40 of the Federal Rules of Appellate Procedure, Intervenor-Appellants herein, respectively petition the judges of this honorable Court for a rehearing of the appeal in the above-entitled cause. In support of this petition, Intervenor-Appellants show the Court as follows:

1. Although the circumstances have changed in this matter, the issues of jurisdiction by the Court and by the Internal Revenue Service over the subject matter and the persons have not yet been addressed as have not the issues of whether or not the rules and regulations and actions of the agency are in conformance with the Constitution and the laws of the United States.

2. The Secretary of the Treasury's requirement that private data be recorded and maintained under duress is illegal surveillance without probable cause and its USE a violation of the Fourth Amendment of the Constitution.

3. The Secretary of the Treasury and his delegates violate the Financial Privacy Act of 1978 through interference with the right to contract and not adhering to the requirements of the Financial Privacy Act of 1978.

4. The Intervenor-Appellants have by Special Appearance challenged the jurisdiction of the Court and the jurisdiction of the Internal Revenue Service over their persons and the subject matter. The Court of Appeals for the Ninth Circuit issued an Order, dated April 26, 1983, dismissing the above entitled appeal as moot, with the matter to be remanded to the district court with direction to vacate the order appealed from. The Court erroneously relied on *United States v. Silva and Silva Accountancy Corp.*, (641 F2d 710 (9th Cir. (1981).

(a) The argument that the Order has been complied with thus mooting any controversy is not confronting the issues raised which are required to be addressed, i.e. jurisdiction.

(b) The court has a duty to examine and decide questions of law and jurisdiction. [*Florida East Coast Railway Co., v. United States* (1914), 234 U.S. 167, *Flota Mercante Grancolombiana, S.A. v. Federal Maritime Commissioner*, (1962), 302 F2d 887, 111 U.S. App D.C. 302].

(c) Authority to summons and use bank deposits to prove income has not been approved by Congress (IR Manual 9781, § 426.3, 426.5). Jurisdiction has not been granted to the court for enforcement of Internal Revenue administrative summons in a situation other than itemized in 28 USC 1340. [26 USC 7402(f)] Congress has not made other provisions; The Secretary of the Treasury, his agents nor the goverment attorneys cannot cure the defect.

(d) In *United States v. Kulukundis*, 329 F2d 197, 199 (1961), the court stated, "Our decision in *Rasquin v. Muccini*, 72 F2d 688 (2 Cir. 193[illegible], cited by appellants was under an earlier revenue act which did not authorize a summons in aid of the collection of a tax." Intervenor-Appellants urge the court to take notice of the fact that the Constitution was not amended between 1934 and 1954 to permit the Congress the authority to violate the Constitution, Article I, Sec.

8, or the Bill of Rights guaranteeing the rights of the sovereign citizens. Acts contrary to the Constitution are null and void.

(e) Where the court has "general" jurisdiction but due to defect in the law, the court wants jurisdiction to enforce its judgements and decrees at law and in equity and thus should not even exercise that "general" jurisdiction over the supposed cause, (La. v. North America Ld., 106 La. 621) and equity has no jurisdiction to cure the defect (McGraw v. Gortner, 96 Md 489), for "A law which restricts their power to render or enforce a judgment is therefore a limitation upon the exercise of their jurisdiction; and a law which destroys or impairs their judgments without such law would have, is equally so." (*Fordyce v. Beecher*, 2 Tex CA 29, 31 SW 179). [See the *Constitution, Article I, Sec. 8; Brushaber v. Union Pacific R.R. Co.*, (1916) 240 U.S.1].

(f) Jurisdiction can be challenged at any time. (*Brady v. Richardson*, 18 ind. 1), for absent jurisdiction, judgments are void and are no bar to the enforcement of any other rights. (*Sandnes v. Sheriff*, 299 NYS 9).

(g) Once jurisdiction is challenged, the court or the agency cannot proceed (*Melo v. U.S.*, 505 F2d 1026; *Joyce v. U.S.*, 474 F2d 215), the burden of proof shifting to the government (*Rosemound v. Lamber*, 469 F2d 416) which must produce on the record all jurisdictional facts related (*Lantana v. Hopper*, 102 F2d 118: *Chicago v. NY*, 337 F Supp 150; 344 F Supp 929), except in race cases as in *Nestor v. Hershey*, 425 F2d 504. In the federal court is carefully guarded against expansion by judicial interpretation or by prior action (e.g. consent) of the parties." (*Amer. F. & G. v. Finn*, 341 U.S. 6, 17, 18); *such jurisdictional facts being required to appear in the record (Baer v. Aut. Assn.*, 503 F2d 393) (Emphasis added.) particularly where one objects to "official and judicial notice" (5USC 556(e), Fed. Rules Ev. 201, etc.; see Jayson, Moore's Federal Practice, M. Bender, Vol. 1, 1A, 1A pt. 2 etc.).

(h) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination the court shall (1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law [28 USC § 2347(1); 5 USC 554(b) (2); 5 USC 556 (d)].

5. The government cited the Secretary of the Treasury's prescribing regulations, certain recordkeeping and reporting requirements

for banks and other financial institutions as authority to require all summonsed records to be produced. The Bank Secrecy Act of October 26, 1970, Pub. L. No. 91-508, 84 Stat. 1114, Secs. 101, 102, 121-129 (12 U.S.C. §§ 1730d, 1829d, 1951-1959) and Secs. 202-213, 231-235, 241-242 (31 U.S.C. §§ 1051-1062, 1081-1083, 1101-1105, 1112-1120).

(a) The *obtaining* and *using* the material required to be recorded and maintained is tantamount to the illegal interception of a wire or oral communication. (See *California Bankers Assn. v. Shultz*, 416 U.S. 49, Justice Douglas dis., p. 90). *Recording* is illegal surveillance without probable cause. This illegal surveillance by the Secretary of private personal affairs is without probable cause as protected against in the Fourth Amendment, and is a lack of 'due process under the law' as guaranteed under the Fifth Amendment.

(b) Surveillance without probable cause is violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

(c) The banks do not freely record, maintain or disclose. This is compelled by court order - and in this instance, disclosed through IRS tactics which were illegal and fraudulent. The records obtained through compulsion were illegally intercepted while Intervenor-Appellants were exercising their basic common law right guaranteed by the Constitution to contract privately for the services of financial institutions.

(d) There is no public information or public meetings involved in the surveillance of personal private documents. (See United States v. Oaks, 527 F2d 937, 941 (1975)). This fact is confirmed by the Public Law requiring banks to record and maintain data for the Secretary's use. Public documents do not need a public law requiring them to be made available to the Secretary.

(e) The requiring of recording and maintaining of bank records is the Secretary's insurance policy which is paid in advance by the loss of Fourth and Fifth Amendment rights of the Intervenor-Appellants and in violation of the Financial Privacy Act of 1978. There was no investigation, suspicion or other probable cause for the Secretary to

require surveillance for a period of three years by recording private documents revealing the most intimate and complete catalog of the Jacques lives. It is not as though all of this data had been discarded into a garbage can to be sifted through by some government agent. The "high degree of usefulness in criminal, tax, or other regulatory investigations or proceedings" is purely speculative and without probable cause.

(f) 18 USC 3504 prohibits evidence acquired by "unlawful act" involving the use of any electronic, mechanical, or other device in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto. The interception describes the Secretary's actions of requiring recording of private communication by electronic process in combination with the magnetic and mechanical processes. Regardless of the form of equipment utilized, the end result is the same - unwarranted interference without probable cause.

(6) The copying of private information is interference with the freedom of contracting as guaranteed by the Constitution (See 28 USC 1981). Intervenor-Apellants entered into an implicit agreement with the banks involved to maintain records in confidence according to the Financial Privacy Act of 1978. There was no agreement for the banks to record and maintain records for a possible future investigation by the Secretary of the Treasury.

(a) Government interference with this basic right is a gross violation of the Constitution and the Financial Privacy Act of 1978, which is Public Law 95-630, Sec. 1101, et seq.

(b) Sec. 1101 defines for the purposes of this title the term of - (H) the Secretary of the Treasury, *with respect to the Bank Secrecy Act** and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II) - *limits recording to checks in excess of $100, nothing else.

(c) Sec. 1103(a) provides that: No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in the financial records of any customer *except in accordance with the provision of this title.*

(d) Sec. 1103(b) provides that: A financial institution shall not release the financial records of a customer until the Government authority seeking such records *certifies in writing to the financial institution that it has complied with the applicable provision of this title.*

(e) The Internal Revenue Service obtained the financial records by deceit and fraud by furnishing the Crocker Bank with an Order denying a rehearing in #82-7551 to obtain records, and secured records from Bank America without a Denial of Stay.

(7) The case cited in the court's order does not relate to the circumstance of this case.

(a) The court should take notice that in *Couch v. United States*, 409 US 322, the Court observed that no federal court has recognized an accountant-client privilege, but that is not the case with financial records as demonstrated by the Financial Privacy Act of 1978 (Pub L. 95-630).

(b) The case cited in the Court's Order, *United States v. Silva and Silva Accountancy Corp.* 641 F2d 710 (9th Cir. (1981) was relied upon in error because the financial records in this case *are* protected by law while accountant's records are not.

Suggestion That Case Be Reheard In Banc

Pursuant to the provisions of Rule 35 of the Federal Rules of Appellate Procedure, Intervenor-Appellants respectfully suggests to the judges of this honorable Court that the above-entitled cause is appropriate for consideration on rehearing by all the judges of this Court convened in banc, and in support of this suggestion Intervenor-Appellants shows:

1. The three-judge District Court (Ninth District) concluded with one judge dissenting, that the domestic reporting provisions of ... Title II of the Bank Secrecy Act ... were repugnant to the Fourth Amendment of the Constitution. (California Bankers Assn. v. Shultz, 347 F Supp 1242 (1972). The Supreme Court reversed this decision only on the ground of the recording and reporting provisions. It did not consider the USE of the records which the three-judge District Court had. Because there was no aggrieved party before the court, the court could not consider that provision. The Intervenor-Appellants are now aggrieved parties before the court because of the USE of the domestic reporting provision of the Bank Secrecy Act. The provision for surveillance without probable cause and intercepting and using private data involves a question of exceptional importance.

2. The Internal Revenue Service has and does act without statutory authority and without the limits of agency authority by violating the Constitutional rights of citizens as has been detailed throughout this proceeding by the Intervenor-Appellants. Given the

voluntary nature of the tax system, this agency's abuses are of vital concern to the Intervenor-Appellants, as well as the entire American population. Because the actions of the Internal Revenue Service are commonly compared with the Gestapo, curbing their lawlessness is imperative for a free Nation. It is the duty of the Court to control abusive actions of government. Quite possible if the Court abdicates their responsibility, the people will rise up to the occasion as occurred at the Boston Tea Party. History does have a way of repeating. It is not the duty of the Court to compensate for Congress' shortcomings of not providing for legal taxation.

For these reasons the Court needs to confront the issues raised by the Intervenor-Appellants.

3. Jurisdiction has never been established in this matter before the Court. That is the first consideration for if the Court is without jurisdiction, there can be no proceedings.

Statement of Properia Persona

We, James Jacques and Gloria Jacques, express belief, based on a reasoned and studied judgment, that this appeal involves a question of exceptional importance, to-wit, Is the USE of private financial records recorded and maintained for the Secretary of the Treasury a violation of one's expectations of security in their persons, papers, and effect against unreasonable search and seizure without warrants supported by oath or affirmation and particularly describing the thing to be searched and seized, and is the recording of private financial records illegal surveillance without probable cause?

Wherefore, Intervenor-Appellants respectfully requests:

1. That a rehearing of the appeal in the above-entitled cause be granted; and

2. That the honorable judges of this Court order that the above-entitled cause be heard by the court in banc.

_____

JAMES JACQUES - Pro Per

_____

GLORIA JACQUES - Pro Per

Date: May 6, 1983

CERTIFICATE

We hereby certify that the foregoing petition for rehearing is not frivolous and is presented in good faith and not for delay.

JAMES JACQUES - Pro Per

GLORIA JACQUES - Pro Per

Date: May 6, 1983

CERTIFICATE OF SERVICE

It is hereby certified that service of this Petition for Rehearing and Suggestion That Case Be Reheard In Banc has been made on appellees in said action by depositing in the United States mail in a sealed envelope with postage thereon, prepaid in full, three true and correct copies of the above-mentioned petition addressed to:

U.S. Department of Justice
Tax Division
Washington, D.C. 20530
Attn: Mr. Michael L. Paup
Chief, Appellate Section

Dated: May 6, 1983

JAMES JACQUES - Pro Per

APPENDIX B
CONSTITUTION, STATUTES AND REGULATIONS

APPENDIX B
CONSTITUTION, STATUTES AND REGULATIONS
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APPENDIX B

The Fourth Amendment of the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 8 of the United States Constitution:

> Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article III, Section 2 of the United States Constitution:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -to all Cases affecting Ambassadors, other public Ministers and Consuls; -to all Cases of admiralty and maritime Jurisdiction; -to Controversies to which the United States shall be a Party; -to Controversies between two or more States; -between a State and Citizens of another State; -between Citizens of different States; -between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In All Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
>
> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

18 USC § 2510(5) provides:

"electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than-

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

18 USC § 3104 provides:

Issuance of search warrant on affidavit; contents to identify persons or place; command to search forthwith, Rule 41(c). (See Federal Rules of Criminal Procedure). (June 25, 1948, ch 645, § 1, 62 Stat. 819.)

18 USC § 3504(b) provides:

As used in this section "unlawful act" means any act [involving] the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title [18 USCS § 2510(5)] in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto. (Added Oct. 15, 1970, P.L. 91-452, Title VII, Part B, § 702(a), 84 Stat. 935.)

Reference 3b

Public Law 91-508

AN ACT

October 26, 1970 [H.R. 15073]

To amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes.

Federal Deposit Insurance Act, amendments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FINANCIAL RECORDKEEPING

Chapter Sec.

1. INSURED BANKS AND INSURED INSTITUTIONS ___ 101
2. OTHER FINANCIAL INSTITUTIONS _____ 121

Chapter 1.—INSURED BANKS AND INSURED INSTITUTIONS

64 Stat. 893; 81 Stat. 610. 12 USC 1830, 1831. See. 101. Retention of records by insured banks. 102. Rentention of records by insured institutions.

§§ 101. Retention of records by insured banks

The Federal Deposit Insurance Act is amended (1) by redesignating sections 21 and 22 as 22 and 23, respectively, and (2) by inserting the following new section immediately after section 20:

"SEC. 21. (a) (1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

"(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(b) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(c) Each insured bank shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

"(d) Each insured bank shall make, to the extent that the regulations of the Secretary so require—

"(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment: and

"(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).

"(e) Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

"(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

"(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for

the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

"(h) The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law."

Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $5,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received regarding a transaction which results in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States;

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

§§ 103.34 Additional records to be made and retained y banks.

(a)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, or each deposit or share account opened with a bank after June 30, 1972, a bank shall, within 45 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer indentification number of the

customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 45-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (b) (11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction.

(2) The 45-day period provided for in paragraph (a) (1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following: (i) Agencies and instrumentalities of Federal, State, local or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families; (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22) U.S.C. sec. 288), and

the members of their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than $10; and (x—) non-resident aliens who are not engaged in a trade business in the United States. In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(4) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(b) Each bank shall in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts,

(ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfer of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

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